

**Letter of Findings Number: 09-0869P
Late Payment Penalty
For the Period 2008**

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ISSUE

I. Tax Administration – Late Payment Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent late payment penalty.

STATEMENT OF FACTS

Taxpayer was assessed a penalty for late payment of income tax. Taxpayer protested the penalty.

The Department sent correspondence dated November 5, 2009, affording Taxpayer the opportunity to a hearing on its protest and/or to provide additional documentation of its protest. Taxpayer sent a letter dated December 1, 2009, with additional documentation and explanation of its protest. This Letter of Findings is therefore written based on the information in Taxpayer's protest file and other Department records relating to Taxpayer.

I. Tax Administration – Late Payment Penalty.

DISCUSSION

Taxpayer protests the imposition of a penalty for late payment of his income tax.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer presented documentation that he was in the process of obtaining a refund from the state of Wisconsin where he files a part-year return on income that his employer reports to Wisconsin. Taxpayer provided documentation substantiating this filing and the grant of refund from Wisconsin. Further, Taxpayer indicated that he had timely requested an extension to file his Indiana income tax return. Indiana Department of Revenue records confirm Taxpayer's request for extension. Taxpayer paid his Indiana income tax ten days after the original due date and before his extension to file expired.

Given the above, Taxpayer has met his burden for waiver of the late payment penalty.

FINDING

Taxpayer's protest is sustained.

Posted: 03/24/2010 by Legislative Services Agency

